

Sheldon Eisenberger (SE 2021)
THE LAW OFFICE OF SHELDON EISENBERGER
30 Broad Street
New York, New York 10004
(212) 422-3843

Attorneys for Defendant
Susan Kagan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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COBALT MULTIFAMILY INVESTORS I, LLC, :
COBALT MULTIFAMILY CO. I, LLC, :
COBALT CAPITAL FUNDING, LLC, and :
VAIL MOUNTAIN TRUST, By ANTHONY :
PADUANO, As Receiver, :

Plaintiffs, :

-against- :

LISA ARDEN, RYAN BELLINA, WYMAN :
BETHEA, JASON BLOCK, JEFF BROOME, :
BRANDON COHEN, STEVEN COHEN, :
COMVEST FINANCIAL CORP., BRIGHAM :
COOMBS, SUSAN DESIENNA, DTA :
HOLDINGS LTD., JOHN DUNDON, THOMAS :
DZWILEWSKI, MICHAEL EISEMANN, :
EQUITRADE HOLDINGS INC., DAVID FARHI, :
RUBEN FORTE, TERRENCE GRAY, :
MAUREEN HEFFERNAN, KRIS HOWARD, :
JOHN JEFFERSON, SUSAN KAGAN, :
FAREAH KHAN, H. STEPHEN KIRSCHNER, :
DAVID KIRSCHMER, ALEX KORICK, :
MICHAEL J. KWON, ARTHUR LANDSMAN, :
JASON MILLER, ALEXANDER MITZNER, :
SAM NAKHLEH, RALPH RODRIGUEZ, DIANE :
SANTULLI, DEVORAH SHALEV, ADAM J. :
STEIN, BRETT STITSKY, JARED STITSKY, :
ADAM SWICKLE, THE WISER NOW CORP., :
ANTHONY TORRICELLI, GREG WEINSTEIN, :
JENNIFER WILKOV and NATHAN YOUNGS, :

Defendants. :
-----X

Case No. 06 Civ. 6172 (KMW)

ANSWER OF DEFENDANT
SUSAN KAGAN

JURY TRIAL DEMANDED

Defendant Susan Kagan ("Kagan"), by her attorneys The Law Office of Sheldon Eisenberger, for her answer to the complaint, alleges as follows:

1. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the complaint.

2. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint.

3. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the complaint.

4. With respect to the allegations contained in paragraph 4 of the complaint, admits that plaintiffs bring this action alleging the matters set forth in said paragraph, denies that the allegations have any merit as to this defendant, and states that she is without knowledge or information sufficient to form a belief as to the truth of the allegations with respect to other defendants.

5. Denies the allegations contained in paragraph 5 of the complaint with respect to this defendant, and states that she is without knowledge or information sufficient to form a belief as to the truth of the allegations with respect to other defendants.

6. Denies the allegations contained in paragraph 6 of the complaint with respect to this defendant, and states that she is without knowledge or

information sufficient to form a belief as to the truth of the allegations with respect to other defendants.

7. Denies the allegations contained in paragraph 7 of the complaint.

8. With respect to the allegations contained in paragraph 8 of the complaint, admits upon information and belief that the offerings were not registered, but denies any illegality or violation of §§5 and 12(a) of the Securities Act of 1933.

9. With respect to the allegations contained in paragraph 9 of the complaint, admits that the Receiver brings this action to recover commissions, but denies the remaining allegations of paragraph 9 of the complaint.

10. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the complaint.

11. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the complaint.

12. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the complaint.

13. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the complaint.

14. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the complaint.

15. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the complaint.

16. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the complaint.

17. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the complaint.

18. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the complaint.

19. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the complaint.

20. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the complaint.

21. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the complaint.

22. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the complaint.

23. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the complaint.

24. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the complaint.

25. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the complaint.

26. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the complaint.

27. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the complaint.

28. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the complaint.

29. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the complaint.

30. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the complaint.

31. Admits the allegations contained in paragraph 31 of the complaint.

32. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the complaint.

33. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the complaint.

34. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the complaint.

35. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the complaint.

36. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the complaint.

37. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the complaint.

38. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the complaint.

39. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the complaint.

40. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the complaint.

41. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the complaint.

42. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the complaint.

43. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the complaint.

44. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the complaint.

45. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the complaint.

46. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the complaint.

47. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the complaint.

48. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the complaint.

49. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the complaint.

50. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the complaint.

51. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the complaint.

52. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the complaint.

53. Admits the allegations contained in paragraph 53 of the complaint.

54. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the complaint.

55. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the complaint.

56. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the complaint.

57. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the complaint.

58. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the complaint.

59. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the complaint.

60. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the complaint.

61. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the complaint.

62. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the complaint.

63. Denies the allegations contained in paragraph 63 of the complaint.

64. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the complaint.

65. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the complaint.

66. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the complaint.

67. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the complaint.

68. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the complaint.

69. Denies the allegations contained in paragraph 69 of the complaint.

70. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the complaint.

71. States that she is without knowledge or information sufficient to form a belief as to the truth of the last sentence of paragraph 71 of the complaint, and admits the remaining allegations of said paragraph.

72. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the complaint.

73. States that she is without knowledge or information sufficient to form a belief as to the truth of the last sentence of paragraph 73 of the complaint, and refers to the document referenced in said paragraph for the precise text thereof.

74. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 of the complaint.

75. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 of the complaint, and refers to the document referenced in said paragraph for the precise text thereof.

76. Denies the allegations contained in the last sentence of paragraph 76 of the complaint, and states that she is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 76 of the complaint.

77. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of the complaint.

78. Admits the allegations contained in paragraph 78 of the complaint.

79. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 of the complaint.

80. Denies the allegations contained in paragraph 80 of the complaint.

81. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of the complaint.

82. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the complaint.

83. With respect to paragraph 83 of the complaint, admits that the statements similar to those referenced therein were made, but states that she is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 83 of the complaint.

84. Admits the allegations contained in paragraph 84 of the complaint, but denies that defendant had knowledge of the facts alleged in said paragraph to the effect that the statements were incorrect.

85. Admits that defendant did not make the statements described in paragraph 85 of the complaint, but denies having had knowledge of the facts alleged in said paragraph, or that defendant had the duty to make the statements.

86. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the complaint.

87. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 of the complaint.

88. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88 of the complaint.

89. Denies the allegations contained in paragraph 89 of the complaint as to this defendant, and states that she is without knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

90. Denies the allegations contained in paragraph 90 of the complaint.

91. For her response to paragraph 91 of the complaint, repeats and realleges each of her responses to paragraphs 1-90 of the complaint, as if fully set forth herein.

92. Denies the allegations contained in paragraph 92 of the complaint.

93. Denies the allegations contained in paragraph 93 of the complaint.

94. Denies the allegations contained in paragraph 94 of the complaint.

95. For her response to paragraph 95 of the complaint, repeats and realleges each of her responses to paragraphs 1-94 of the complaint, as if fully set forth herein.

96. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 of the complaint.

97. Denies the allegations contained in paragraph 97 of the complaint.

98. Denies the allegations contained in paragraph 98 of the complaint.

99. Denies the allegations contained in paragraph 99 of the complaint.

100. For her response to paragraph 100 of the complaint, repeats and realleges each of her responses to paragraphs 1-99 of the complaint, as if fully set forth herein.

101. Denies the allegations contained in paragraph 101 of the complaint.

102. Denies the allegations contained in paragraph 102 of the complaint.

AS FOR A FIRST AFFIRMATIVE DEFENSE

103. Plaintiffs are barred from recovering on their claims under the doctrine of in para delicto.

AS FOR A SECOND AFFIRMATIVE DEFENSE

104. Upon information and belief, to the extent plaintiffs sustained any injury, it is a result of their own culpable conduct.

AS FOR A THIRD AFFIRMATIVE DEFENSE

105. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

AS FOR A FOURTH AFFIRMATIVE DEFENSE

106. To the extent plaintiffs sustained any damages, it is as a result of the conduct of others over whom this defendant had no control.

AS FOR A FIFTH AFFIRMATIVE DEFENSE

107. Upon information and belief, many, if not most of, the sales alleged in the complaint occurred after defendant became disassociated with plaintiffs.

108. Defendant terminated her relationship with plaintiffs effective July 20, 2005, prior to any knowledge of alleged fraudulent or unlawful activity, nor could defendant reasonably have known of any such alleged unlawful activity.

AS FOR A SIXTH AFFIRMATIVE DEFENSE

109. Plaintiffs are barred from asserting their claims against defendant by virtue of a release given by Cobalt Capital Companies, LLC and Cobalt Capital Funding, LLC on or about July 20, 2005, as memorialized in the “Severance and Indemnity Agreement and General Release of Claims” (“Indemnity Agreement”) between (i) Cobalt Capital Companies, LLC and Cobalt Capital Funding, LLC, and (ii) defendant.

AS FOR A SEVENTH AFFIRMATIVE DEFENSE

110. To the extent defendant received commissions from plaintiff for work in connection with matters other than the sale of the securities at issue, sections 5 and 12 of the Securities Act of 1933 do not apply, and plaintiffs have no claims based on those sections.

AS FOR AN EIGHTH AFFIRMATIVE DEFENSE AND
COUNTERCLAIM AGAINST PLAINTIFF

111. Plaintiff Cobalt Capital Funding, LLC, pursuant to the Indemnity Agreement, agreed to indemnify and hold defendant harmless from and against any “losses” (as that term is defined in the Indemnity Agreement), which are related to or arise out of any action or omission of plaintiff.

112. Defendant has incurred damages and losses and may incur additional damages and losses for which plaintiff is obligated to indemnify defendant pursuant to the Indemnity Agreement.

113. Defendant is entitled to indemnification and to be held harmless in the event any award is rendered against her in this action or she enters into a settlement of the action, and/or for contribution to the extent of plaintiffs' culpability for any of the unlawful acts alleged in the complaint.

WHEREFORE, defendant Susan Kagan requests judgment dismissing the complaint as against her; awarding defendant damages on her counterclaim in an amount to be determined by the Court; awarding defendant judgment for contribution against plaintiffs to the extent an award is rendered against defendant in this action; and awarding defendant the costs, disbursements, and reasonable attorneys fees incurred in this suit, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 6, 2006

THE LAW OFFICE OF SHELDON EISENBERGER
Attorneys for Susan Kagan

By: /s/ Sheldon Eisenberger
Sheldon Eisenberger (SE 2021)
30 Broad Street
New York, New York 10004
(212) 422-3843

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Attorneys for Defendant
Susan Kagan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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COBALT MULTIFAMILY INVESTORS I, LLC, :
COBALT MULTIFAMILY CO. I, LLC, :
COBALT CAPITAL FUNDING, LLC, and :
VAIL MOUNTAIN TRUST, By ANTHONY :
PADUANO, As Receiver, :

Plaintiffs, :

-against- :

LISA ARDEN, RYAN BELLINA, WYMAN :
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JENNIFER WILKOV and NATHAN YOUNGS, :

Defendants. :
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Case No. 06 Civ. 6172 (KMW)

JURY DEMAND

Defendant Susan Kagan requests a trial by jury on all claims.

Dated: New York, New York
November 6, 2006

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Attorneys for Susan Kagan

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